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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
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10 JUSTIN ROBERT JORDAN,  
11 Plaintiff,

12 v.

13 DAVE TRIESCHMANN,  
14 Defendant.  
15  
16

2:17-cv-00089-SAB

**ORDER DISMISSING SECOND  
AMENDED COMPLAINT**

**1915(g)**

17 BEFORE THE COURT is Plaintiff's Second Amended Complaint, ECF No.  
18 11. He seeks \$142,480.00 in monetary damages, claiming he was falsely  
19 imprisoned without due process from July 16, 2015, to November 30, 2015. He  
20 claims that Defendant Dave Trieschmann, a Chain Coordinator at the Spokane  
21 County Jail, did not properly calculate his earned time credit.

22 Plaintiff states that on July 9, 2015, he received two sentences. He asserts  
23 that while Defendant Treischmann gave him full credit for one sentence, he used  
24 an incorrect date to calculate the second, making Plaintiff's earned release date  
25 February 8, 2016.

26 Plaintiff alleges that Defendant Treischmann responded to his first  
27 Memorandum of Earned Credit on August 5, 2015, but used the same calculation  
28 and did not give Plaintiff credit for the dates, December 24, 2013 to July 28, 2014.

1 In reply, Plaintiff sent a second “Memorandum of Earned Credit” on August 6,  
2 2015, but received no response. Plaintiff presumes that Defendant Treischmann  
3 received the second memorandum because it was sent in the same manner as the  
4 first, but opines that he neglected to respond.

5 Plaintiff then waited to send a third memorandum until November 23, 2015.  
6 He states at that time the earned credit was given in full and he was released on an  
7 emergency basis on November 30, 2015. He contends he was over-incarcerated for  
8 137 days. He claims the failure to give him full credit in the first place or to  
9 respond until he presented his third memorandum deprived him of his freedom.

10 Here, Plaintiff indicates Defendant Treishmann responded to his first  
11 memorandum with the same miscalculation initially given. He presumes Defendant  
12 Treischmann neglected to respond to his second memorandum. He admits he  
13 received an emergency release following his third memorandum in November  
14 2015. Plaintiff’s allegations present, at worst, a claim of the negligent proffer of  
15 information, or the negligent failure to respond to a second memorandum.  
16 Negligence is not actionable under 42 U.S.C. § 1983. *Davidson v. Cannon*, 474  
17 U.S. 344, 347-48 (1986).

18 Although granted the opportunity to do so, Plaintiff did not amend his  
19 complaint to state a claim upon which relief may be granted. Therefore, **IT IS**  
20 **ORDERED** the Second Amended Complaint is **DISMISSED with prejudice**  
21 under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

22 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who  
23 brings three or more civil actions or appeals which are dismissed as frivolous or for  
24 failure to state a claim will be precluded from bringing any other civil action or  
25 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious  
26 physical injury.” 28 U.S.C. § 1915(g). Plaintiff is advised to read the statutory  
27 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s complaint may  
28 count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may

1 adversely affect his ability to file future claims.

2 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
3 enter judgment, provide copies to Plaintiff at his last known address, and close the  
4 file. The Clerk of Court is further directed to forward a copy of this Order to the  
5 Office of the Attorney General of Washington, Corrections Division. The Court  
6 certifies any appeal of this dismissal would not be taken in good faith.

7 **DATED** this 28th day of November 2017.

A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian  
United States District Judge